

Introduced by:	Mayor
Date:	02/17/04
Hearing:	03/16/04
Action:	Postponed until 04/20/04
Action:	Postponed until 08/03/04
Action:	Postponed until 09/07/04
Action:	Enacted as Amended
Vote:	9 Yes, 0 No

**KENAI PENINSULA BOROUGH
ORDINANCE 2004-05
(MAYOR)*SUBSTITUTE***

**AN ORDINANCE AMENDING THE KENAI PENINSULA BOROUGH CODE
CHAPTER 5.12 BY REVISING PROCEDURES FOR APPEALS TO THE BOARD
OF EQUALIZATION**

WHEREAS, the Board of Equalization is established pursuant to Alaska Statute 29.45.200 to hear appeals from determinations of the assessor regarding unequal, excessive, improper, or undervaluation of property; and

WHEREAS, the assembly is authorized to adopt rules governing the board of equalization procedures by ordinance pursuant to AS 29.45.200(b); and

WHEREAS, clarification of some of the procedures contained in the current Kenai Peninsula Borough code regarding board of equalization procedures will help eliminate confusion regarding parties' obligations and rights in future hearings;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KP 5.12.055 is amended as follows:

5.12.055. Record--Discovery--Motions--Written presentation--On appeal.

A. Discovery: No more than 30 days after a written appeal is filed, the assessor and the appellant may submit interrogatories and requests for production to the other party. All such interrogatories and requests must seek information relevant to the valuation or, in the case of a flat tax appeal, an alleged error in ownership or classification of property. A party may not submit more than 10 interrogatories and 10 requests for production, including all discrete subparts of each interrogatory and request for production, to the opposing party. Responses shall be due no later than 10 days after the request has been served by fax, in person, or mail upon the opposing party. For good cause shown the board chair may grant additional time to respond and authorize additional interrogatories and requests for production. In determining good cause for this purpose, the chair

shall consider the burden and expense on the party to timely produce the requested information, whether the party seeking the extension has exercised due diligence in attempting to respond timely, whether the party seeking additional information has exercised due diligence in attempting to gain the necessary information from other sources, the complexity of the case, prejudice to the other party for allowing additional time and/or requests for information, and other factors deemed relevant by the chair. Any request for an extension or for additional discovery that is granted to one party shall also be equally granted to the other party. In any event, all responses must be delivered to the requesting party no later than 20 days before the board hearing on the appealed assessment.

B.[A.] Upon receipt of a written appeal, the assessor shall provide documents or evidence relating to each assessment that is appealed, including a summary of assessment data, to the borough clerk, for the board of equalization, no later than 15 days before the board hearing on the appealed assessment. Pages shall be marked as assessor's exhibits and numbered. The borough clerk shall mail a copy of the documents or evidence to the appellant by first class mail within one business day of receipt.

C.[B.] The appellant shall provide a copy of any documents or evidence relating to the assessment being appealed to the borough clerk, for the board of equalization, no later than 15 days before the board hearing on the appealed assessment. Pages shall be marked as appellant's exhibits and numbered. The clerk shall provide a copy of the appellant's documents to the assessor.

D.[C.] The appellant's case may be made by written presentation, if the appellant so elects, the pages shall be marked as appellant's brief and numbered. The written presentation, along with any documents and evidence referred to in 5.12.055(B), must be provided to the borough clerk, for the board of equalization, no later than 15 days before the board hearing on the appealed assessment. The clerk shall provide a copy of appellant's filings to the assessor upon receipt.

E. Except as provided below, all motions submitted by either party to the board of equalization must be submitted to the borough clerk in writing no later than seven days before the scheduled hearing. The opposing party shall have three business days to respond to any motion filed with the clerk. Any motion or opposition thereto must be accompanied by a certificate of service certifying that a true and correct copy of the motion or opposition was served on the opposing party by fax, in person, or first-class mail at the last known address or fax number. The chair of the board, or in his or her absence, the vice-chair, is authorized to decide each submitted motion. The decision may be reviewed by the board at the discretion of the chair or vice-chair, as appropriate. For good cause shown, including without limitation the bad faith conduct of the other party or new evidence which could not reasonably be obtained before the seven-day deadline with the exercise of due diligence, a party may submit a motion to the board no less than two business days before the scheduled hearing. In this

instance, the chair, or in the chair's absence the vice-chair, shall provide the opposing party with a reasonable opportunity to oppose the motion prior to issuing a decision.

SECTION 2. Amend KPB 5.12.060(G) by making the following changes:

- G.**
1. Hearing: The hearing shall be conducted informally with respect to the introduction of evidence. Irrelevant evidence may be excluded by the presiding officer. Each side shall have a total of no more than 30 minutes to present their case. Each side shall be responsible for dividing their 30 minutes between oral presentation, argument, testimony (including witness testimony), and rebuttal. The board may expand or limit the length of the hearing depending on its complexity, or take other action to expedite the proceedings. Cross-examination will not be permitted during presentation of the case. If a witness testifies during presentation of either the appellant's or the assessor's case, unless excused by the board with the concurrence of the appellant and the assessor, the witness must remain available in the assembly room to be called to testify during rebuttal by the appellant and the assessor.
 2. Exhibits: The only exhibits that shall be admitted into the record at the hearing are those exhibits provided to the clerk in accordance with KPB 5.12.055 B through KPB 5.12.055 D. However, at the hearing, parties may use demonstrative or illustrative exhibits, provided that all such exhibits may only be duplicates of exhibits or information provided to the board in accordance with KPB 5.12.055 B through KPB 5.12.055 D. Additionally, witnesses may write on a board while orally testifying to illustrate their testimony. The limitation on the use of exhibits in this section shall not preclude the parties from presenting oral testimony at the hearing.
 3. Failure to respond to requests: Failure to timely provide information requested pursuant to these rules without good cause shown shall, upon notice from the requesting party to the clerk and the other party, prevent the party failing to provide the information from including such information in the written evidence or using such evidence at the hearing. Before a ruling is issued on this matter, the party failing to provide the requested information shall be provided with a reasonable opportunity by the board chair to present its case as to why this sanction should not be imposed, and the opposing party shall have a reasonable opportunity to respond.

SECTION 3. Amend KPB 5.12.060 (I) as follows:

- I. The appellant or representative then presents the appellant's case when called by the presiding officer. At this time the appellant may call the assessor or appropriate appraiser or any other witnesses the appellant intends to present as a witness at this time. The scope of direct questioning is limited to the issues in dispute. Should the appellant wish, and prior to beginning the presentation, a portion of the 30 minutes

allowed may be reserved for a rebuttal presentation at the end of the assessor's case. At the conclusion of the appellant's presentation, board members may question the appellant or other witnesses. Both parties shall be given an opportunity of equal time to respond to all questions asked of either party by any board member.

SECTION 4. Amend KPB 5.12.060(J) as follows:

J. The assessor or designee then presents the borough's case when called by the presiding officer. At this time the assessor may call the appellant or any other witnesses the assessor intends to present as a witness. The scope of direct questioning is limited to the issues in dispute. Should the assessor wish, and prior to beginning the presentation, a portion of the 30 minutes allowed may be reserved for a rebuttal presentation at the end of the appellant's rebuttal. At the conclusion of the assessor's presentation, board members may ask questions of the assessor or other witnesses. Both parties shall be given an opportunity of equal time to respond to all questions asked of either party by any board member.

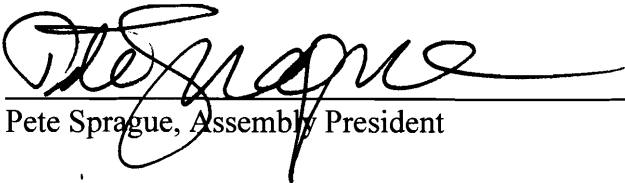
SECTION 5. That KPB 5.12.060 P is amended as follows:

P. The burden of proof is on the appellant. The only grounds for the board to adjust the assessment are proof of unequal, excessive, improper, or under valuation, based on facts proven at the appeal hearing. The board may not alter the assessment of a property unless a timely written appeal has been filed concerning the property. If an appellant has refused or failed to provide the assessor or the assessor's agent full access to property or records related to assessment of the property, upon notice from the assessor to the appellant and the clerk, the appellant shall be precluded from offering evidence on the issue or issues affected by that lack of access. Before a ruling is issued on the admissibility of such evidence, the appellant shall be provided with a reasonable opportunity by the board chair to present its case as to why this sanction should not be imposed, and the assessor shall have a reasonable opportunity to respond.

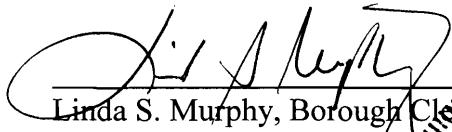
SECTION 6. For appeals of 2004 assessments filed after enactment of this ordinance the chair may impose a deadline of less than 30 days after the appeal is filed to submit interrogatories and requests for production in order that all such information may be exchanged before the deadline to submit documentation to the board.

SECTION 7. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7TH DAY OF SEPTEMBER, 2004.


Pete Sprague, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk

